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Noncitizen Eligibility For Major Federal Public Assistance Programs: Legal Concepts

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Summary

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dramatically changed noncitizen eligibility for public assistance.[1] This Act prohibits many classes of noncitizens, legal and illegal aliens alike, from receiving assistance. In addition, states have greater discretion in establishing eligibility for receipt of public benefits. These changes in eligibility rules have required courts to revisit prior case law and determine how principles that were expressed in the context of earlier, simpler regulation of noncitizen benefits apply now. This report reviews the holdings of the major pre-1996 cases, and examines how they are being applied in the new regulatory environment. This report will be updated as events warrant.

General Standards. From a constitutional perspective, setting rules on providing assistance to noncitizens implicates three sets of interests: (1) the plenary authority of the federal government to regulate immigration, along with its authority to spend federal funds for the general welfare; (2) state autonomy to regulate, and expend funds for, the general welfare; and (3) the rights of noncitizens to be free from unlawful discrimination.

During the 1970s and early 1980s, the Supreme Court decided a series of cases on governmental authority to discriminate against aliens in providing governmental benefits. Collectively, these cases set out the following basic constitutional principles: state governments generally cannot discriminate between aliens who are authorized to live here indefinitely and U.S. citizens in setting eligibility requirements for state benefits; states have broader but limited authority to discriminate against aliens who are here illegally; and the federal government, by contrast, has wide discretion to discriminate both between citizens and legal aliens and among various classes of legal aliens.

[1] Pub. Law No. 104-193. For basic background on the policies involved, see CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Program: Policies and Legislation.*

Graham v. Richardson.[2] In 1971, the Supreme Court declared state-imposed welfare restrictions on legal immigrants unconstitutional, both because the state statutes violated the Equal Protection Clause of the 14th Amendment[3] and because they encroached upon the exclusive federal power to regulate immigration.

At issue in *Graham* was whether states could impose separate, additional conditions for legal aliens receiving state or federal assistance funds they administered.[4] The Court held that, under the Equal Protection Clause of the 14th Amendment, they could not, absent compelling circumstances.[5] According to the Court, aliens as a class are a prime example of the type of "discrete and insular minority" that is due heightened judicial solicitude when states discriminate against them.[6] Moreover, the Court rejected the asserted state interests in preserving scarce fiscal resources for citizens as insufficiently compelling to justify the alienage classifications.[7]

Equal protection aside, the Court further held that federal pre-eminence in regulating aliens was an independent ground for finding the separate state-imposed rules unconstitutional.[8] Under the then-existing law, Congress did not disqualify legal immigrants from receiving federal assistance, nor did Congress attach any immigration consequences to a legal alien's receiving assistance due to conditions arising after the alien's arrival. Also, as now, legal resident aliens were allowed to move as freely within the United States as citizens. Under these circumstances, the Court opined, an additional burden placed by a state on welfare benefits for legal resident aliens impermissibly encroached upon the exclusive federal power to regulate the conditions under which aliens may remain in the United States.[9]

In a footnote to the *Graham* opinion, the Court stated that it had no occasion at that time to decide whether Congress, in the exercise of the federal immigration and naturalization power, could enact statutes imposing residency requirements on aliens as a condition of receiving federally funded benefits.[10]

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[2] 403 U.S. 365.

[3] In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Court considered the issue of whether a noncitizen is a person constitutionally guaranteed equal protection of the laws, in a challenge to San Francisco's discriminatory denial of permits to all Chinese laundry operators. The Court explained that the provisions of the 14th Amendment are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. *Id.*

[4] 403 U.S. 365.

[5] *Id.*

[6] *Id.* at 371-72.

[7] *Id.*

[8] *Id.* at 380.

[9] *Id.*

[10] *Id.* at 382 n.14.

Mathews v. Diaz.[11] In 1976, the Court approved a congressionally-imposed five-year residency requirement for alien participation in the Medicare Supplementary Insurance (part B) program. In upholding the residency requirement, the Court declared that it is "obvious that Congress has no constitutional duty to provide all aliens with the welfare benefits provided to citizens."[12] According to the Court, Congress may draw distinctions among aliens in providing benefits so long as the distinctions are not "wholly irrational."[13]

The *Mathews* Court recognized that the judicial deference given to a discriminatory federal welfare provision was at odds with *Graham's* recent application of a close scrutiny standard to a discriminatory state welfare measure.[14] Yet, the *Mathews* Court explained that the equal protection analysis in the two cases "involves significantly different considerations," because the "Fourteenth Amendment's limits on state powers are substantially different from the constitutional provisions applicable to the federal power over immigration and naturalization."[15]

Plyler v. Doe.[16] In 1982, the Supreme Court, in a 5-4 decision, held that it is unconstitutional to deny illegal alien children residing in a state equal access to elementary and secondary schools. The Court reached this conclusion even while recognizing that "illegal aliens," by virtue of their illegal presence here alone, are due lesser constitutional protection than legal aliens are. Nevertheless, the Court looked at then-current immigration enforcement policy and the consequences of depriving basic education to children who had no control over their status, and found that the state's discrimination against illegal alien children could only be justified by "substantial state interests," a burden not met in the case before it. At the same time, the Court emphasized the unusual confluence of circumstances in *Plyler*, and suggested state authority to discriminate could be influenced by federal immigration policy.

Welfare Reform. In general, the rules on alien eligibility for government assistance were relatively simple prior to 1996. Aliens who were permanently residing in the United States under color of law were treated like citizens in qualifying for state benefits and, for the most part, in qualifying for federal benefits. Illegal aliens, with some exceptions, were disqualified under most major assistance programs, but the rules were inconsistent or nonexistent with respect to a range of other assistance. This changed with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

The PRWORA broadly rewrote the alien eligibility rules for federal and state public assistance. Though subject to many detailed exceptions, the new rules include a number

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[11] 426 U.S. 67 (1976).

[12] *Id.* at 82.

[13] *Id.*

[14] *Id.* at 84.

[15] *Id.* at 86-87.

[16] 457 U.S. 202 (1982). For a discussion of the *Plyler* decision, see CRS Report 97-542 A, *The Right of Undocumented Alien Children to Basic Education: An Overview of Plyler v. Doe*.

of basic standards. For example, aliens, including legal permanent resident aliens, do not qualify for food stamps or supplemental security income (SSI).[17] In addition, states may determine which aliens qualify for Temporary Assistance For Needy Families (TANF) or Medicaid.[18] Moreover, legal immigrants are not eligible for federal means-based assistance during their first five years here. States are also authorized to determine which aliens qualify for state-funded benefits, including state cash assistance, so long as the standards are not more restrictive than standards under comparable federal programs.[19] Illegal aliens are also denied federal benefits and may qualify for state benefits only under laws passed by the states after PRWORA's enactment.

The reach and interrelationship of these standards is unclear. What is clear, however, is that PRWORA, by direct requirement or through authorization, potentially limits alien access to state-funded benefits in ways that are arguably unconstitutional under Supreme Court precedent, especially *Graham v. Richardson*.[20] On the one hand, the Court's precedent recognizes the plenary power of Congress to regulate aliens, and emphasizes the inability of the states to enact laws that conflict with congressional policy in this area.[21] On the other hand, precedent also holds that, under the fourteenth amendment, states may not discriminate against legal permanent aliens absent a compelling state interest.[22] The PRWORA raises the issue of whether the new federal restrictions on aliens somehow affect the equal protection test that has been applied to states under *Graham*.

In *Graham*, when the State of Arizona argued that Congress had implicitly authorized the states to restrict Aid to Families with Dependent Children (AFDC) benefits for legal immigrants, the Court responded: "Although the federal Government admittedly has broad constitutional power to [regulate aliens]...Congress does not have the power to authorize the individual States to violate the Equal Protection Clause."[23] In other words, the Court suggested that federal interests could not overcome the heightened protection that legal immigrants, as a "suspect class," are due vis a vis the exercise of state power. This was the position taken by the New York Court of Appeals in *Aliessa v. Novello*[24] in overturning a New York law that relied on a congressional authorization to the states in PROWRA to deny certain legal aliens Medicaid. The court found that Title IV of the PRWORA could not constitutionally authorize New York to determine for itself the extent to which it will discriminate against legal aliens for state medicaid eligibility, because they remained a "suspect class" that merited heightened protection for equal protection purposes.[25] The court also noted that an *authorization* to the states to discriminate did not appear to promote an overarching federal immigration policy because

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[17] See, e.g., 8 U.S.C. § 1611(a), 1612(a).

[18] 8 U.S.C. § 1622(a).

[19] 8 U.S.C. § 1622(a).

[20] 403 U.S. 365.

[21] *Mathews v. Diaz*, 426 U.S. 67 (1976).

[22] *Graham v. Richardson*, 403 U.S. 365 (1971).

[23] *Id.*

[24] 96 N.Y.2d 418 (N.Y. 2001).

[25] *Id.* at 434-35.

it allows for uneven treatment of similarly situated aliens among the states.[26] As such, the court opined that Title IV could not give the challenged statute "special insulation from strict scrutiny review."[27] Thus, the challenged statute "must be evaluated as any other State statute that classifies based on alienage."

State courts have reached differing conclusions as to the constitutionality of state classifications of alienage made pursuant to a federal authorization. For example, in *Kurti v. Maricopa County*,[28] the Arizona Court of Appeals reviewed a state statute that denied state health care for indigents to all aliens who arrived after PROWRA's enactment. The court principally referenced two provisions of PROWRA in overturning the statute on equal protection grounds. Section 403 provides that aliens arriving after PRWORA's enactment are not eligible for certain federal means-tested health benefits, including Medicaid, for five years after entry.[29] The second section, 412, generally authorizes states to determine the eligibility of aliens for state benefits.[30] The court first dismissed the state's argument that it tracked federal standards, finding that the Arizona statue extended ineligibility beyond five years after entry. The court then held that the authority given to states under section 412 could not sustain Arizona's restrictions, especially where state law goes beyond comparable federal restrictions. In the court's opinion, the equal protection analysis in *Graham v. Richardson* applied, and the statute could not pass "strict scrutiny."

In *Alvarino v. Wing*,[31] a lower New York court dealt with an issue of state laws that affirmatively sought to restore some benefits to some aliens who lost assistance because of PRWORA. PRWORA generally made aliens ineligible for food stamps, a federally-funded program Congress later authorized the states to provide state-funded food assistance to aliens who lost eligibility for food stamps because of PRWORA. New York then passed a law to give state food assistance to some, but not all, aliens who had lost food stamps. The court found this affirmative grant of assistance to a limited class constitutional under a "rational basis" test. The court found that the state was not obligated to assist either all or none of the affected aliens, finding that due to the "explicit Congressional approval permitting the states to provide food aid benefits to the persons who lost benefits," alienage could not be considered a suspect classification in this instance.[32]

A similar result was reached through somewhat different reasoning by a Massachusetts court in *Doe v. McIntire*,[33] a case that examined a Massachusetts statute that gave state assistance to certain aliens who were ineligible for comparable federal

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[26] *Id.* at 435.

[27] *Id.*

[28] 33 P.3d 499 (Ariz. Ct. App. 2001).

[29] 8 U.S.C. § 1613(a)

[30] 8 U.S.C. § 1622.

[31] 261 A.D.2d 255 (N.Y. App. Div., May 20, 1999).

[32] *Id.*

[33] 773 N.E.2d 404 (Mass. 2002).

assistance because of PRWORA. Eligibility for this state assistance was limited to aliens who resided in the state for at least six months. Essentially the court held that, while state laws broadly discriminating between citizens and aliens under a congressional authorization had to be justified under the heightened "strict scrutiny test," the statute before it was subject to a lesser standard because it was limited to a grant of assistance to aliens only. Applying the more lenient standard, the court concluded that the distinctions drawn in the law were rational.

The foregoing cases address congressional *authorizations* to states to set alien eligibility rules, with courts looking more favorably on affirmative exercises of authority to provide benefits to those who are otherwise ineligible than on exercises of authority to cut off assistance. As mentioned above, however, Congress also has *mandated* that certain aliens not receive various types of federal and state assistance. Among the legal issues related to these mandates is whether they impose classifications on individuals not directly subject to them, which are constitutionally impermissible.

The indirect reach of a mandated denial of assistance was at issue before the United States Court of Appeals for the Second Circuit in the case of *Lewis v. Thompson.*[34] Under PROWRA, Congress mandated that illegal alien women not be eligible for prenatal care under Medicaid. Congress also enacted a provision that automatically provides Medicaid coverage at birth to children born of Medicaid-eligible mothers, but imposes a waiting period on covering children born of mothers who are not Medicaid-eligible.[35] Under both the Constitution and federal statute, children born in the U.S. of illegal alien mothers are U.S. citizens at birth, and a dispute arose as to whether Congress could differentiate among U.S. citizen children on the basis of their mothers' immigration status.

In addressing this issue, the court dismissed the argument that children of all Medicaid-ineligible mothers rather than alienage was the relevant classification.[36] The court considered what should be the proper standard of review for a federal statute that discriminates on the basis of the immigration status of an individual's parent. Relying on *Plyler*, the court found that an intermediate level of scrutiny analysis was appropriate. The court found that the circumstances at issue were analogous to the ones presented in *Plyler* inasmuch as children were penalized for the illegal conduct of their parents resulting in significant and enduring adverse consequences to the children. The court focused on this aspect of the *Plyler* decision while not explicitly addressing the intermediate level of scrutiny or the pertinent governmental interests. As such, the court found that citizen children of undocumented mothers must be accorded automatic eligibility on terms as favorable as those available to the children of citizen mothers.[37]

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[34] 252 F.3d 567 (2d Cir. 2001).

[35] 42 U.S.C. § 1396a(e)(4) and 42 C.F.R. §§ 435.117, 435.301(b)(1)(iii).

[36] 252 F.3d 567, 588 (stating that "this argument calls to mind Anatole France's view of the equality that forbids rich and poor alike to sleep under bridges.").

[37] *Id.*